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Attorneys for Defendant
Wachovia Bank

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CARLOS AUGUSTO LOPES,

Plaintiff,

-against-

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF NEW YORK

Case No.: 07 Civ. 5928 (DLC)

MELLON INVESTOR SERVICES LLC, JP MORGAN
CHASE & CO., WACHOVIA CORPORATION,
WACHOVIA BANK, N.A., WACHOVIA/FIRST
UNION BANK, HELENA BUSHROE, JOHN DOE
AND JANE ROE,

Defendants.

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NOTICE OF MOTION OF WACHOVIA TO DISMISS THE COMPLAINT

PLEASE TAKE NOTICE, that upon the accompanying memorandum of law, and upon the annexed affidavits of Timothy Merck, sworn to the 11th day of September 2007, and of John A. Nocera sworn to the 25th day of September 2007, and upon all the exhibits to the foregoing, including the Complaint in this action, and all other papers and pleadings heretofore had herein, the undersigned attorneys for defendant Wachovia Bank, N.A., (also sued herein as Wachovia Corporation and "Wachovia/First Union Bank"), will move this Court, before the Honorable Denise L. Cote, United States District Judge for the Southern District of New York, at the United States Courthouse, 500 Pearl Street, New York, New York on the 26th day of October, 2007 or as soon

thereafter as counsel can be heard for an Order:

a. Pursuant to Fed. Rule Civ. Pro. 12(b)(6), dismissing the complaint as against Wachovia and the Second Cause of Action asserted against Wachovia therein, for the plaintiff's failure to state a cause of action upon which relief may be granted against Wachovia.

b. For such other and further relief in favor of movant as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Civil Rule 6.1(b) objections or opposition by plaintiff, if any, to the relief requested in this motion shall be served upon the undersigned attorneys for defendant Wachovia not later than October 12, 2007, and Wachovia's Reply, if any shall be served no later than five (5) business days after service of any such opposition papers.

Dated: New York, New York
September 25, 2007

ROSNER NOCERA & RAGONE, LLP

By: \S\ John Nocera
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